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No. 92-207

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

XAVIER V. PADILLA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether membership in a joint venture to transport drugs gives co-conspirators a privacy or property interest entitling them to challenge the investigatory stop of one of the members of the conspiracy, and the subsequent search of the car he was driving.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 960 F.2d 854. The oral rulings and minute orders of the district court (Pet. App. 22a-34a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 1992. On June 23, 1992, Justice O'Connor entered an order extending the time for filing a petition for a writ of certiorari to and including July 30, 1992. The petition for a writ of certiorari was filed on July 30, 1992, and was granted on November 2, 1992. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

An indictment returned in the United States District Court for the District of Arizona charged respondents with conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C. 846, and possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). In addition, respondent Xavier Padilla was charged with engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848. The district court granted respondents' motions to suppress most of the evidence in the case. The court of appeals affirmed in part, vacated in part, and remanded. Pet. App. 1a-21a.

1. On September 26, 1989, Officer Russell Fifer of the Arizona Department of Public Safety was patrolling on Interstate Highway 10 near Casa Grande, Arizona, when a Cadillac passed him. Although the Cadillac was initially traveling 65 to 70 miles per hour, it slowed to 50 miles per hour as it passed the officer. The driver appeared to be acting suspiciously, so the officer followed the car for several miles. Due to a miscommunication, the police radio

dispatcher informed Officer Fifer that the license plates on the Cadillac were registered to a different make of car. Officer Fifer signaled the driver of the Cadillac to stop, and the car pulled over. Pet. App. 2a-3a; 5/8/90 Tr. 132-139, 143-145.

Luis Arciniega was the driver and sole occupant of the car. He furnished Officer Fifer a driver's license in his own name and an insurance card in the name of respondent Donald Simpson. Another officer, who was assisting Officer Fifer, asked Arciniega for permission to search the car for weapons or contraband, and Arciniega consented. The officer opened the trunk and discovered 560 pounds of cocaine. Officer Fifer then arrested Arciniega. During the course of the stop, Officer Fifer learned from the radio dispatcher that the initial license plate information was incorrect and that the plates were in fact registered to a Cadillac owned by respondent Donald Simpson. Pet. App. 3a-4a; 5/15/90 Tr. 91-96.

After his arrest, Arciniega agreed to make a controlled delivery of the cocaine. He made a telephone call from a motel in Tempe, Arizona, and shortly thereafter respondents Jorge and Maria Padilla came to the motel. The Padillas were arrested when they tried to drive away in the Cadillac. Maria Padilla then agreed to cooperate with the officers and led them to a house in which respondent Xavier Padilla was staying. Pet. App. 4a-5a.

Law enforcement authorities learned that the cocaine-laden Cadillac belonged to a United States Customs agent, Donald Simpson. The investigation linked Simpson and his wife, respondent Maria Sylvia Simpson, to Xavier Padilla. The authorities ultimately concluded that the Simpsons and Xavier Padilla were the principals in a large drug smuggling

operation engaged in transporting drugs from Mexico on behalf of distributors who owned the drugs. DEA agents conducting a related investigation were able to link respondent Warren Strubbe to the conspiracy, and they discovered another 440 pounds of cocaine, which had been unloaded from the Simpsons' Cadillac shortly before Arciniega's arrest. Pet. App. 5a-7a; C.A. Excerpt of Record Doc. 259, at 4-8.

2. Prior to trial, respondents moved to suppress all the evidence discovered in the course of the investigation. They claimed that the evidence was the fruit of the stop of Arciniega, which they argued was unlawful. The district court ruled that respondents had a legitimate Fourth Amendment interest in the stop of Arciniega, and that they were therefore entitled to press their claim that the stop was illegal. The court based that ruling on its determination that respondents were involved in "a joint venture for transportation" of the contraband "that had control of the contraband" at the time of the stop. Pet. App. 22a. The court concluded that the Simpsons retained a Fourth Amendment interest in the trunk of their car and that Xavier Padilla, Maria Padilla, and Jorge Padilla were entitled to challenge the stop based "solely [on] the joint venture aspect" of the case. *Id.* at 23a.

At the conclusion of the suppression hearing, the district court ruled that Officer Fifer lacked reasonable suspicion to stop Arciniega.[1] Pet. App. 25a. The court therefore granted the motion to suppress. *Id.* at 29a, 30a. The court further concluded that "[h]ad there not been a stop, it is clear * * * none

[1] The correctness of that ruling is not at issue in this Court.

of [the] investigation would have transpired." *Id.* at 34a. The court therefore suppressed all the evidence obtained during the course of the investigation. *Id.* at 31a-32a, 33a-34a.

3. The court of appeals affirmed the suppression order as to respondents Xavier Padilla, Donald Simpson, and Maria Simpson; it remanded for further findings with respect to respondents Jorge and Maria Padilla; and it reversed as to respondent Warren Strubbe.

a. In finding that the Simpsons and Xavier Padilla were entitled to challenge the stop of Arciniega, the court relied on a line of Ninth Circuit cases holding that leaders or supervisors of a joint criminal venture enjoy a legitimate privacy interest in the persons or places involved in the conspiracy by virtue of their role in the joint venture. Pet. App. 9a-11a. The court of appeals therefore assessed respondents' roles in the venture to determine whether they exercised sufficient ownership and control over the operation to give them "standing" to challenge the stop.

The Simpsons and Xavier Padilla had standing, the court concluded, "not simply because the Simpsons owned the car and jointly possessed the drugs with Xavier but also because they participated in the organization, particularly on the day of the stop." Pet. App. 12a.[2] Donald Simpson had standing because "[h]e was a critical player in the transportation scheme who was essential [because of his status as a Customs agent] in getting the drugs across the border." *Ibid.* Maria Simpson had standing, the court

[2] Donald Simpson held title to the vehicle, and Maria Sylvia Simpson claimed an ownership interest based on her community property rights. See 5/8/90 Tr. 73-74; Resp. C.A. Br. 9.

held, because she played "a supervisory role tying everyone together and overseeing the entire operation at least from the Mexico end." *Id.* at 12a-13a. Xavier Padilla had standing because he "exhibited substantial control and oversight with respect to the purchase [of the drugs] in Mexico and * * * the transportation through Arizona." *Id.* at 13a. In assessing his standing, the court concluded, "[i]t is inconsequential that he was not present at the stop nor that he was unable to exclude others from inspecting the vehicle." *Ibid.*

With respect to respondents Jorge and Maria Padilla, who attempted to pick up the cocaine-laden Cadillac following Arciniega's arrest, the court of appeals held that it was unable to determine from the record whether they were "responsible partners of the venture or mere employees in a family operation." Pet. App. 15a. The court noted that they "did not control the drugs yet they were an integral part of the formalized business arrangement that did." *Id.* at 14a. Because it was not clear from the record whether "they shared any responsibility for the enterprise," *ibid.*, the court remanded for further findings on that point.

Finally, the court held that respondent Warren Strubbe lacked standing, because he "demonstrated no active control or supervision over the drugs or the vehicle involved in this conspiracy." Pet. App. 15a-16a.

b. Having rejected the government's argument that none of the respondents had any Fourth Amendment interest implicated by the stop of Arciniega, the court of appeals held that the unlawful stop justified the suppression of almost all the evidence discovered in the course of the ensuing investigation as the fruit

of the unlawful stop. Pet. App. 17a-21a. The only evidence that the court of appeals held not to be suppressible was the statement of a witness who came forward more than two weeks after the stop of Arciniega and provided information about Xavier Padilla and Donald Simpson. *Id.* at 20a. The primary evidence in the case, the 1000 pounds of cocaine, was ordered suppressed as to those respondents with standing.

SUMMARY OF ARGUMENT

The investigatory stop of Luis Arciniega, the drug courier, did not violate the Fourth Amendment rights of any of the respondents. None was a victim of the traffic stop of Arciniega, which violated his rights alone. Under traditional principles of Fourth Amendment law, defendants are not entitled to seek suppression of evidence seized as a result of the violation of a third party's rights. In this case, however, the Ninth Circuit held that respondents could obtain suppression of the cocaine Arciniega was transporting, as well as other evidence developed in the course of the investigation, under that court's "co-conspirator exception" to the traditional rules of Fourth Amendment standing. Applying the "co-conspirator exception," the court of appeals held that those respondents with a supervisory role in the conspiracy were entitled to challenge the stop of Arciniega because they had an interest, as joint venturers, in the success of Arciniega's mission and a possessory interest in the cocaine he was carrying.

The "co-conspirator exception" conflicts with the principles of Fourth Amendment standing announced by this Court. This Court has made it quite plain that a defendant may not seek suppression of evi-

dence seized in violation of the Fourth Amendment unless he was a victim of the illegal search or seizure. The introduction of illegally seized evidence at trial does not make a defendant a "victim" for this purpose if the defendant was not one whose personal Fourth Amendment rights were violated when the evidence was obtained. That means that the police must have invaded some privacy or property interest of the defendant in order for the defendant to be entitled to challenge the search or seizure. It is not enough that the police invaded the rights of one of the defendant's co-conspirators or that the police conduct interfered with the success of the criminal venture of which the defendant was a part.

Respondents argue that they are entitled to challenge the stop of Arciniega under traditional principles of Fourth Amendment standing. First, they suggest that the Simpsons are entitled to standing because they were the owners of the car that Arciniega was driving. The temporary traffic stop of Arciniega, however, did not invade any privacy or property interest in the car that the Simpsons retained when they entrusted it to Arciniega. The temporary detention of Arciniega did not meaningfully deprive the Simpsons of the use of the car, and the record does not reflect that the Simpsons took steps to ensure the privacy of the trunk of the car that would protect them against Arciniega's decision to consent to a search of the trunk.

Second, respondents argue that they had a possessory interest in the cocaine that was violated by the police conduct in this case. Even if respondents are regarded as having acquired a possessory interest in the cocaine, however, that interest does not accord them standing to challenge the stop of Arciniega.

Because respondents had no legal right to possess the cocaine, its seizure did not deprive them of any lawful possessory interest in the drugs. In any case, the brief detention of the cocaine occasioned by the stop of the car in which it was being carried did not meaningfully interfere with whatever possessory interests respondents might have had. Ownership of property found in a particular place does not give the owner a privacy interest in that place; and once the police encountered the cocaine in the car trunk, the respondents' possessory rights, whatever they were, gave way to the officers' superior right to seize the contraband.

Finally, there is no force to Xavier Padilla's argument that he was entitled to challenge the stop of Arciniega because he was Arciniega's direct supervisor and was monitoring the progress of the shipment of cocaine as it traveled through Arizona from Mexico. Padilla's supervisory role and close attention to Arciniega's progress indicates that Padilla was very interested in the fate of the cocaine, and no doubt was very disappointed to learn that it had been intercepted. But that does not mean that the stop of Arciniega in any way invaded Xavier Padilla's personal right to be free from unreasonable searches and seizures. The illegal arrest or search of a son or daughter of Padilla's whom he supervised closely would no doubt be a matter of grave concern to him, but such a seizure or search would nonetheless not be a violation of Padilla's own Fourth Amendment rights, and would not give him standing to challenge the search or seizure through invocation of the exclusionary rule in a criminal case.

In sum, the court of appeals erred by permitting respondents to challenge the stop of Arciniega based

on their positions of supervision and control within the drug smuggling conspiracy, and their standing to challenge the stop cannot be sustained on any other ground.

ARGUMENT

BECAUSE THE STOP OF ARCINIEGA DID NOT IMPLICATE RESPONDENTS' FOURTH AMENDMENT RIGHTS, THEY MAY NOT OBTAIN SUPPRESSION OF THE EVIDENCE SEIZED AS A RESULT OF THE STOP

The stop of the car driven by Luis Arciniega affected no Fourth Amendment interest of any of the respondents. None of the respondents was present at the stop, and none had his freedom of movement affected by the stop. The court of appeals nonetheless permitted respondents to challenge the legality of the stop on the theory that they were joint venturers in the transportation of the drugs Arciniega was carrying in the trunk of the car. In so doing, the court of appeals followed a long line of Ninth Circuit decisions extending Fourth Amendment standing to participants in a criminal scheme because of their status as joint venturers. That court has treated participation in a criminal conspiracy as sufficient to give rise to a privacy interest in a place searched, or a property interest in items seized, if the defendant's role in the conspiracy afforded him supervisory responsibility over the premises searched or the property seized. Pet. App. 9a-11a.[3]

[3] See *United States* v. *Johns*, 851 F.2d 1131, 1135-1136 (1988); *United States* v. *Broadhurst*, 805 F.2d 849, 851-852 (1986); *United States* v. *Quinn*, 751 F.2d 980, 981 (1984), cert. granted, 474 U.S. 900 (1985), cert. dismissed, 475 U.S. 791 (1986); *United States* v. *Pollock*, 726 F.2d 1456, 1465 (1984); *United States* v. *Johns*, 707 F.2d 1093, 1100 (1983), rev'd on other grounds, 469 U.S. 478 (1985); *United States* v. *Perez*, 689 F.2d 1336, 1338 (1982).

We submit that the Ninth Circuit's "co-conspirator exception" to the traditional principles of Fourth Amendment standing, *United States* v. *Taketa*, 923 F.2d 665, 672 (9th Cir. 1991), cannot be reconciled with principles of Fourth Amendment standing announced by this Court. In particular, the Ninth Circuit's approach is irreconcilable with the settled principle that Fourth Amendment violations are personal and that only those whose own rights have been invaded by a search or seizure may seek suppression of evidence obtained as a result of that violation.

Once respondents' participation in the conspiracy is removed from the Fourth Amendment calculus, it is clear under this Court's decisions that no other circumstance—including the Simpsons' ownership of the stopped car, any possessory interest respondents may have had in the seized cocaine, or any role the respondents may have had in directing Arciniega's movements—affords respondents standing to challenge the stop.

A. To Obtain Suppression Of Evidence, A Defendant Must Show That The Challenged Conduct Invaded His Own Fourth Amendment Interests

Traffic stops are "seizures" within the meaning of the Fourth Amendment. Accordingly, such stops must satisfy the Fourth Amendment's requirement of reasonableness. See, *e.g.*, *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 450 (1990); *Berkemer* v. *McCarty*, 468 U.S. 420, 436-437 (1984); *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979). The principal

issue at the suppression hearing in this case was whether Officer Fifer's decision to stop the car Arciniega was driving was supported by a reasonable suspicion of unlawful activity. See *Berkemer* v. *McCarty*, 468 U.S. at 439; *United States* v. *Sharpe*, 470 U.S. 675, 682 (1985); *Terry* v. *Ohio*, 392 U.S. 1 (1968). The district court concluded that the stop was unsupported by reasonable suspicion and therefore constituted an unlawful seizure that violated Arciniega's Fourth Amendment rights. See Pet. App. 25a-29a.[4] The government did not challenge that ruling on appeal and we do not do so here. The question at this point in the case is a separate one: whether the illegal stop went beyond violating Arciniega's rights and violated the Fourth Amendment rights of the five respondents.

One fundamental principle, long established in this Court's cases, guides the analysis of that question. A defendant's Fourth Amendment rights "are violated only when the challenged conduct invaded *his* legitimate expectation of privacy rather than that of a third party." *United States* v. *Payner*, 447 U.S. 727, 731 (1980). That principle follows from the general rule that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas* v. *Illinois*, 439 U.S. 128, 133-134 (1978), quoting *Alderman* v. *United States*, 394 U.S. 165, 174 (1969). In short, in order to obtain suppression, a person must

[4] Neither the district court nor the court of appeals held, or even intimated, that the subsequent consensual search of the vehicle and its trunk constituted a separate Fourth Amendment violation. Rather, the lower courts concluded that the cocaine found in the trunk had to be suppressed because it was a tainted fruit of the unlawful stop.

be "a victim of a search or seizure" rather than one "who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else." *Jones* v. *United States*, 362 U.S. 257, 261 (1960); see also *United States* v. *Payner*, 447 U.S. at 735; *Alderman* v. *United States*, 394 U.S. at 173; *Goldstein* v. *United States*, 316 U.S. 114, 120 (1942).

That principle is based on this Court's recognition that it would impose undue costs on the criminal justice system to permit an individual whose rights have not been violated to have the evidence against him suppressed. Because the exclusion of probative evidence "exacts a costly toll upon the ability of courts to ascertain the truth in a criminal case," *United States* v. *Payner*, 447 U.S. 727, 734 (1980), the Court has restricted application of the exclusionary rule "to those areas where its remedial objectives are thought most efficaciously served." *Ibid.*, quoting *United States* v. *Calandra*, 414 U.S. 338, 348 (1974). The Court has stated that it is "beyond any doubt that the interest in deterring illegal searches does not justify the exclusion of tainted evidence at the instance of a party who was not the victim of the challenged practices." *Payner*, 447 U.S. at 735. See *Simmons* v. *United States*, 390 U.S. 377, 389 (1968); *Wong Sun* v. *United States*, 371 U.S. 471, 492 (1963); *Alderman*, 394 U.S. at 174-175.

The Court has also made it clear that the defendant, as "[t]he proponent of a motion to suppress[,] has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *Rakas*, 439 U.S. at 131 n.1. In order to prevail, the defendant must show "not only that the search * * * was illegal, but also that he had

a legitimate expectation of privacy in [the area that was searched or the item that was seized]." *Rawlings* v. *Kentucky*, 448 U.S. 98, 104 (1980); *Jones* v. *United States*, 362 U.S. at 261. Thus, respondents are not entitled to complain about the illegal seizure in this case unless they can demonstrate that the seizure violated their personal Fourth Amendment rights.

B. Respondents' Co-Conspirator Status Did Not Give Rise To A Privacy Or Property Interest That Was Affected By The Stop Of Arciniega

Rather than following the mandate of this Court's cases and analyzing the way in which the respondents' Fourth Amendment interests may have been implicated by the traffic stop of Arciniega, the court of appeals invoked its co-conspirator exception to the traditional rules of Fourth Amendment standing. In accordance with circuit precedent, the court of appeals focused on each respondent's role in the conspiracy and granted or denied each one standing based on his or her degree of involvement in the scheme. Because the Simpsons and Xavier Padilla were "critical player[s]" (Pet. App. 12a) in the joint venture, with "supervisory role[s]" (*ibid.*) that called for their "substantial control and oversight" over the criminal enterprise (*id.* at 13a), the court found that they had legitimate privacy interests that were invaded by the stop of Arciniega. With respect to Jorge and Maria Padilla, although they were "active members" (*id.* at 14a) who were an "integral part" (*ibid.*) of the criminal venture, the court found that it was unclear whether they "shared any responsibility" (*ibid.*) for the enterprise; accordingly, the court remanded for the district court "to determine whether they were responsible partners of

the venture or mere employees." *Id.* at 15a. Finally, the court denied Warren Strubbe standing because he had "no active control or supervision over the drugs or the vehicle involved in this conspiracy." *Id.* at 16a.

By focusing on each respondent's role in the drug importation scheme, rather than on whether each was the victim of an illegal seizure, the court of appeals committed a fundamental error. Under settled Fourth Amendment principles, a defendant's status as a co-conspirator—no matter how significant his role in the conspiracy—is irrelevant to the question whether his Fourth Amendment rights have been violated. Only a person whose privacy or property interests were affected by a seizure may contest its lawfulness, see *Alderman*, 394 U.S. at 172-173; *Wong Sun*, 371 U.S. at 491-492; 4 Wayne R. LaFave, *Search and Seizure* §§ 11.3, 11.3(i), at 280-283, 359-362 (2d ed. 1987). An individual's Fourth Amendment interests are not affected by a seizure simply because a co-conspirator has been arrested or the contraband that is the subject of the smuggling conspiracy has been seized.

In analyzing whether a defendant's Fourth Amendment rights are implicated, the defendant's status as a co-conspirator cannot create an expectation of privacy where one otherwise would not exist. The fact that a defendant acts in league with others to accomplish the ends of a joint venture has no bearing on the basic Fourth Amendment question—whether law enforcement officers violated the defendant's right to be free from unreasonable seizures of his person, property, or premises.

Alderman v. *United States* stands for precisely that point. In that case, the defendants urged "that if evidence is inadmissible against one defendant or

conspirator, because tainted by electronic surveillance illegal as to him, it is also inadmissible against his codefendant or co-conspirator." 394 U.S. at 171. In rejecting that argument, this Court held that "[c]o-conspirators and codefendants have been accorded no special standing" under the Fourth Amendment. *Id.* at 172. The Court relied on the "established principle * * * that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." *Id.* at 171-172.

Brown v. *United States*, 411 U.S. 223 (1973), is also instructive. In that case, the defendants were convicted of transporting and conspiring to transport stolen goods to their co-conspirator, Knuckles, whose retail store was searched pursuant to a defective warrant while the defendants were in custody in another State. The defendants moved to suppress the evidence seized at the store, arguing that they had a property interest in the stolen goods by virtue of their conspiratorial relationship wtih Knuckles. This Court held that the defendants lacked any cognizable Fourth Amendment interest, pointing out that they were not on the premises at the time of the search and had no proprietary or possessory interest in the store. *Id.* at 229. The Court also rejected the argument that the conspiracy gave the defendants standing, without deciding whether co-conspirator status could ever establish standing. *Id.* at 230 n.4. The court characterized as "doubtful" the assumption that "the alleged conspiracy between [defendants] and Knuckles could support a 'constructive possession' of the merchandise at Knuckles' store," but the Court noted that in any event the defendants' "property interest" in the stolen merchandise was "totally illegitimate." *Ibid.*

No court other than the Ninth Circuit has accepted the notion that a person's role in a joint venture can give rise to a legitimate Fourth Amendment interest in a search or seizure affecting other members of the conspiracy.[5] The lower courts have recognized that the Ninth Circuit stands alone in treating membership in a conspiracy as relevant to Fourth Amendment analysis, see *United States* v. *Kiser*, 948 F.2d at 424, and that the Ninth Circuit's approach is "indistinguishable from the discredited co-conspirator" standing arguments rejected by this Court. *United States* v. *Gerena*, 662 F. Supp. 1218, 1245, 1247 n.30 (D. Conn. 1987); see also *United States* v. *Little*, 735 F.2d 1049, 1053 ("Neither [a defendant's] mere presence in the conspiracy nor the acts of his co-conspirators can give him a legitimate expectation [of privacy] * * * where none exists otherwise."), rev'd on other grounds, 743 F.2d 1261 (8th Cir. 1984), cert. denied, 469 U.S. 1217 (1985).

In addition to being inconsistent with the decisions of this Court and other courts of appeals, the Ninth Circuit's recognition of joint venture standing can dramatically increase the cost of suppressing evidence in conspiracy cases. This case illustrates that point. Because a single conspirator was unlawfully stopped,

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[5] See, *e.g.*, *United States* v. *Kiser*, 948 F.2d 418, 424 (8th Cir. 1991), cert. denied, 112 S. Ct. 1666 (1992); *United States* v. *Soule*, 908 F.2d 1032, 1036-1037 (1st Cir. 1990); *United States* v. *Manbeck*, 744 F.2d 360, 373-374 (4th Cir. 1984), cert. denied, 469 U.S. 1217 (1985); *United States* v. *Brown*, 743 F.2d 1505, 1506-1507 (11th Cir. 1984); *United States* v. *DeLeon*, 641 F.2d 330, 337 (5th Cir. 1981); *United States* v. *Davis*, 617 F.2d 677, 690 (D.C. Cir. 1979), cert. denied, 445 U.S. 967 (1980); *United States* v. *Galante*, 547 F.2d 733, 739 (2d Cir. 1976), cert. denied, 431 U.S. 969 (1977); *United States* v. *Hunt*, 505 F.2d 931, 942 (5th Cir. 1974), cert. denied, 421 U.S. 975 (1975).

the courts below have suppressed virtually all of the evidence against the leaders of the enterprise, including a corrupt law enforcement official, and have effectively terminated their prosecutions on serious drug trafficking charges—all despite the fact that they were not the persons seized in the highway stop. Whatever the additional benefits of extending the exclusionary rule to co-conspirators may be, they do not justify such a "further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman*, 394 U.S. at 174-175.[6]

Not only does the Ninth Circuit's doctrine impose great costs on the criminal justice system, but it does so in a particularly perverse fashion. To take advantage of the unlawful search or seizure of a co-conspirator, a defendant in the Ninth Circuit must demonstrate that he had a leadership or central role in the conspiracy. The most culpable participant in such an operation—like Xavier Padilla or the Simp-

[6] To illustrate how sweeping the Ninth Circuit's rule can be, suppose that the police illegally seize an address book from A. Using information obtained from the address book, they subsequently conduct lawful searches of the residence of B, the leader of the conspiracy, and discover cocaine during the course of that search. Under the Ninth Circuit's co-conspirator doctrine, B has a Fourth Amendment interest in the seizure of the address book from A, and may obtain suppression of all the evidence against him because it was discovered as the fruit of the unlawful seizure of the address book. Indeed, if the seizure of A's address book led to the lawful discovery of other evidence in the possession of other, unrelated persons, B would still be entitled to suppression of that evidence as the fruit of the unlawful seizure of the book from A, despite the fact that B had absolutely no privacy interest that was invaded by the discovery of any of the evidence.

sons—may therefore be effectively immunized from prosecution, while a relatively minor figure such as Strubbe is left to face the full brunt of the government's evidence. The doctrine thus has the anomalous result of rewarding conspirators for assuming a leading role in the conspiracy. To permit respondents to move to suppress evidence based on a challenge to a stop—even though they had no Fourth Amendment interest implicated in the stop—is an unsupported and unsound rule that serves only to confer a Fourth Amendment windfall on defendants like respondents.

C. Respondents Failed To Establish Any Privacy Or Property Interest That Was Affected By The Stop Of Arciniega

The court of appeals' standing decision turned on whether respondents were principals in the drug-trafficking conspiracy. The court therefore did not decide whether any other ground was sufficient to afford respondents standing, although it did note that the Simpsons' ownership of the stopped car was relevant to the Fourth Amendment analysis. Pet. App. 12a. When respondents' membership in the conspiracy is put aside, it is plain that there is no basis for finding that their personal rights were implicated by the illegal stop of Arciniega. Respondents' freedom of movement obviously was not affected by the stop of the car Arciniega was driving. None of the respondents were in the car at the time of the stop. They were therefore not affected in any legally cognizable way by the investigatory stop of Arciniega, since the interests in being free from a suspicionless vehicle stop "are personal to the driver and passengers in the car stopped, who have their travel interrupted * * * [and] are detained on the side of the road." *United States* v. *Powell*, 929 F.2d 1190, 1195 (7th Cir.), cert. denied, 112 S. Ct. 584 (1991).

The stop of Arciniega was the sole Fourth Amendment violation found by the district court and the court of appeals. Those courts ordered suppression of the cocaine found in the trunk of the car and the other evidence seized after the stop because that evidence was deemed to be the fruit of the illegal stop. Neither court found any independent illegality in the search of the trunk or in any of the other investigative steps taken in this case. The search of the trunk was undertaken pursuant to Arciniega's consent, and the courts did not find that his consent was involuntary. Once the police discovered the cocaine in the trunk of the car, their right to seize the contraband overrode any possessory interest respondents might have had in the drugs. See *Horton* v. *California*, 496 U.S. 128 (1990); *Illinois* v. *Andreas*, 463 U.S. 765, 771 (1983).

Because the only Fourth Amendment violation identified by the district court and the court of appeals was the stop of the car, the judgment in this case can be upheld under traditional principles of Fourth Amendment standing only if respondents can show that the stop affected their personal Fourth Amendment interests.[7] They attempt to do so in three ways:

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[7] Respondents cannot challenge the admission of the cocaine against them on the ground that its discovery was the fruit of a violation of Arciniega's Fourth Amendment rights. It is a logical corollary of the Fourth Amendment standing doctrine that a defendant "can prevail on a 'fruit of the poisonous tree' claim only if he has standing regarding the violation which constitutes the poisonous tree." 4 Wayne R. LaFave, *Search and Seizure* § 11.4, at 371 (2d ed. 1987) (citation omitted). See *Wong Sun*, 371 U.S. at 491-492; *Goldstein* v. *United States*, 316 U.S. at 121 (defendant cannot move to suppress evidence obtained through exploitation of illegal search if the defendant did not have standing to object to the search); *United States* v. *Soule*, 908 F.2d at 1037 (same).

by relying on the Simpsons' ownership of the car; by asserting that all the respondents had a possessory interest in the cocaine because of their roles in the conspiracy; and by relying on Xavier Padilla's role as Arciniega's immediate supervisor in the transportation operation. See Xavier Padilla Br. in Opp. 37-38. None of those interests is sufficient to grant respondents the right to obtain suppression of the evidence under the Fourth Amendment principles set forth by this Court.

1. ***The Simpsons' Ownership Interest In The Car.*** The stop of Arciniega, as distinct from the consensual search of the car's trunk, did not meaningfully interfere with the Simpsons' property or privacy interests as owners of the car. As the Seventh Circuit has stated, "a vehicle owner who is not in his car at the time it is stopped should not, absent unusual circumstances * * *, have standing to object to the stop." *United States* v. *Powell*, 929 F.2d at 1195. Although "[i]t is conceivable that a stop might implicate a[n absent] vehicle owner's possessory interests, as where the stop meaningfully deprives the vehicle owner of the anticipated use of his car," *ibid.*, no such circumstances are present in this case.

The Simpsons entrusted the car to Arciniega for a significant period of time; they did not indicate at the suppression hearing when, if ever, Arciniega was expected to return the car.[8] Under those circumstances, the Simpsons cannot possibly be found to

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[8] In fact, the Simpsons falsely reported the vehicle stolen soon after Arciniega's arrest. See 5/8/90 Tr. 83-84, 97.

have met their burden of showing that the brief traffic stop in this case interfered with their possessory interests in the car. To be sure, the temporary investigatory stop in this case ultimately ripened into an arrest of Arciniega and a seizure of the car. But that was because of the discovery of the cocaine in the trunk, which fully justified the arrest and seizure. Unless the Simpsons have standing to object to the investigatory stop, they cannot object to the ultimate seizure of the car any more than they could object if the police had developed probable cause to search and seize the car by conducting an unlawful search of Arciniega's home.

A theoretical delay in the ultimate return of the car does not give the owners of the car who have entrusted it to a third party the right to challenge a brief investigatory stop of the third party. A delay in the return of the car would have resulted if Arciniega had been stopped for questioning while he was eating at a roadside restaurant or staying at a motel along his route, yet the Simpsons plainly would have no protectible Fourth Amendment interest in those settings. The fact that Arciniega was in the car when he was stopped does not give the Simpsons (or the other respondents) any greater Fourth Amendment interest in the stop.

To take another example, respondents' right to object to the stop of Arciniega is no greater than the right that another member of the conspiracy would have to object to the stop if he had lent Arciniega a firearm to carry with him or a suit to wear during the trip and the stop had delayed return of the firearm or the suit. The delay in the return of the property would interfere, incrementally, with the owner's

right of possession, but that effect would not make the owner of the firearm or the suit a "victim of a search or seizure," *Jones* v. *United States*, 362 U.S. at 261.

As we have noted, neither the district court nor the court of appeals found that the search of the car's trunk was a separate violation of the Fourth Amendment. The fruits of the search were suppressed not because the search was itself unlawful, but only because the search was a product of the unlawful stop. Yet, even if the district court and the court of appeals had found an independent violation of the Fourth Amendment in the search of the trunk and had based their standing decision with respect to the Simpsons on that violation, the decision below would still be wrong, because the record does not reflect that the Simpsons retained a privacy interest in the trunk of the car at the time of the stop.

Nothing in the record indicates that, in turning the car over to Arciniega, the Simpsons took any steps to exclude Arciniega or anyone else from the trunk while the car was out of the Simpsons' custody and control. In these circumstances, "[t]he legitimate and reasonable expectation of privacy * * * attached to [Arciniega's] possession and not to [the Simpsons'] title," *United States* v. *Dall*, 608 F.2d 910, 915 (1st Cir. 1979), cert. denied, 445 U.S. 918 (1980). That is, the Simpsons abandoned their expectation of privacy in the car when they relinquished possession of it to Arciniega. See *Frazier* v. *Cupp*, 394 U.S. 731, 740 (1969) (by allowing his cousin to use his duffel bag, and by leaving it in his house, Frazier "assumed the risk" that his cousin would allow someone else to look inside). In similar situations, the federal courts repeatedly have held

that the owner of a car lacks Fourth Amendment standing to object to the search of the car while it is under a third party's control. See *United States* v. *Dunkley*, 911 F.2d 522, 526 (11th Cir. 1990), cert. denied, 111 S. Ct. 765 (1991); *United States* v. *One 1986 Mercedes Benz*, 846 F.2d 2, 4 (2d Cir. 1988); *United States* v. *One 1977 Mercedes Benz*, 708 F.2d 444, 448-450 (9th Cir. 1983), cert. denied, 464 U.S. 1071 (1984); *United States* v. *Dall*, 608 F.2d at 914-915; *United States* v. *Dyar*, 574 F.2d 1385, 1390-1391 (5th Cir.), cert. denied, 439 U.S. 982 (1978); *United States* v. *Nunn*, 525 F.2d 958, 959 (5th Cir. 1976); *United States* v. *Mendoza*, 473 F.2d 692, 695-696 (5th Cir. 1973).

2. ***Respondents' Possessory Interest In The Cocaine.*** The temporary stop of the car likewise did not affect any possessory interest respondents had in the cocaine hidden in the trunk. First, for the same reasons that the mere stop of the car did not constitute an unreasonable seizure as to the Simpsons, the brief detention of the cocaine incident to the stop did not work a "meaningful interference with [respondents'] possessory interests" in the cocaine. *Soldal* v. *Cook County*, No. 91-6516 (Dec. 8, 1992), slip op. 5, quoting *United States* v. *Jacobsen*, 466 U.S. 109, 113 (1984).

Second, because respondents were not legally entitled to possess the cocaine, the detention or seizure of the cocaine could not deprive them of any lawful possessory interest in the drugs. "Congress has decided—and there is no question about its power to do so—to treat the interest in 'privately' possessing cocaine as illegitimate." *United States* v. *Jacobsen*, 466 U.S. at 123; see also *Andreas*, 463 U.S. at 771; *United States* v. *Place*, 462 U.S. 696, 707

(1983); *Brown*, 411 U.S. at 230 n.4; cf. *Rakas*, 439 U.S. at 141 n.9 (no privacy interest in stolen car that was searched); *Jones* v. *United States*, 362 U.S. 257, 267 (1960) (persons wrongfully present in searched premises cannot claim privacy interest). A claimed proprietary interest in contraband thus is not protected by the Fourth Amendment and cannot give the "owner" standing to challenge the seizure of the drugs.[9]

Even if Arciniega's consent to search the trunk was invalid and the search of the trunk therefore constituted an independent Fourth Amendment vio-

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[9] See, *e.g.*, *United States* v. *Bentley*, 706 F.2d 1498, 1505 n.5 (8th Cir.), cert. denied, 464 U.S. 830 (1983); *United States* v. *Parks*, 684 F.2d 1078, 1083 n.7 (5th Cir. 1982); *United States* v. *Bruneau*, 594 F.2d 1190, 1194 n.6 (8th Cir.), cert. denied, 444 U.S. 847 (1979); *United States* v. *Washington*, 586 F.2d 1147, 1154 (7th Cir. 1978); *United States* v. *Pringle*, 576 F.2d 1114, 1119 (5th Cir. 1978); *United States* v. *Galante*, 547 F.2d 733, 739-740 (2d Cir. 1976), cert. denied, 431 U.S. 969 (1977); *United States* v. *Emery*, 541 F.2d 887, 890 (1st Cir. 1976); *United States* v. *Sacco*, 436 F.2d 780, 784 (2d Cir.), cert. denied, 404 U.S. 834 (1971); *United States* v. *Bozza*, 365 F.2d 206, 223 (2d Cir. 1966).

We recognize that *United States* v. *Jeffers*, 342 U.S. 48 (1951), can be read to allow a suppression claim to be based on the defendant's interest in seized contraband. The decision in *Jeffers*, however, is properly understood as based on the defendant's legitimate expectation of privacy in the hotel room that was searched, an expectation that was not lost simply because the defendant used the room in part as a storage area for his narcotics. See *United States* v. *Salvucci*, 448 U.S. 83, 90-91 n.5 (1980); *Rakas*, 439 U.S. at 136. Insofar as *Jeffers* held that the defendant's possessory interest in the seized contraband was sufficient to confer "standing" to challenge the search, it is inconsistent with subsequent decisions of this Court and therefore is no longer authoritative.

lation, respondents' interest in the cocaine would not give them standing to challenge that search. This Court has specifically "decline[d] to use possession of a seized good as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched." *United States* v. *Salvucci*, 448 U.S. 83, 92 (1980). Thus, "[t]he person in legal possession of a good seized during an illegal search has not necessarily been subject to a Fourth Amendment deprivation." *Salvucci*, 448 U.S. at 91. See also *Rawlings* v. *Kentucky*, 448 U.S. 98, 105-106 (1980).[10]

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[10] The "unexamined assumption" (*Salvucci*, 448 U.S. at 90) that a possessory interest sufficient to prove criminal liability also suffices to confer a Fourth Amendment privacy interest was one of the premises of the "automatic standing" rule of *Jones* v. *United States*, 362 U.S. 257 (1960). In overturning that rule in *Salvucci*, the Court expressly rejected the contention "that possession of a seized good is the equivalent of Fourth Amendment 'standing.'" 448 U.S. at 93. Similarly, in *Rawlings* v. *Kentucky*, *supra*, decided the same day as *Salvucci*, the Court squarely held that a possessory interest in the items seized during a search does not establish a privacy interest in the area searched. 448 U.S. at 105-106.

The Court in *Rakas*, after explaining that casual visitors do not have a privacy interest in searched premises, went on to note that "[t]his is not to say that such visitors could not contest the lawfulness of the seizure of evidence or the search if their own property were seized during the search." 439 U.S. at 142 n.11. This statement does not imply that a possessory interest in the items seized is sufficient, without more, to establish a privacy interest in the area searched that would enable the defendant to challenge the search. Rather, it simply reflects the general proposition, recognized elsewhere in *Rakas*, 439 U.S. at 143-144 & n.12; *id.* at 153 (Powell, J., concurring), that a person may challenge the seizure of his own property and that his use of an area as a repository for his personal effects may indicate that he has an expectation of privacy in that area. The statement is thus consistent with the Court's subsequent decisions in *Salvucci* and *Rawlings*.

As we discussed above, nothing in the record suggests that the Simpsons retained an expectation of privacy in the trunk of the car when they entrusted the car to Arciniega. And none of the other respondents had any interest in the car that could give rise to a privacy interest in the trunk. The respondents' possessory interest in the cocaine therefore did not give them standing to challenge either the seizure of the cocaine or the search of the trunk that led to that seizure.

3. Xavier Padilla's Supervisory Role With Respect to Arciniega. Respondents argue (Br. in Opp. 9, 37-38) that Xavier Padilla was directly supervising Arciniega as he transported the cocaine and that "care was taken to protect the cargo as it traveled through Arizona." Br. in Opp. 38. However, respondents did not acquire a Fourth Amendment interest in the security of Arciniega's person or the cocaine that they entrusted to him simply because they hired him to transport the contraband and directed his activities in that venture. Cf. *Rawlings* v. *Kentucky*, 448 U.S. 98, 105-106 (1980). Even if Padilla had been monitoring Arciniega's progress on a moment-to-moment basis, the stop of Arciniega would not have violated Padilla's Fourth Amendment rights. The stop would have been frustrating to Padilla, no doubt, but it would not have infringed his privacy or property rights any more than it would have infringed the rights of the sellers of the cocaine or the purchasers who were awaiting delivery and hoping for an uneventful transportation. Padilla

would be equally concerned, no doubt, about an unlawful arrest or search of a close friend or family member. But no matter how great the degree of his concern, he would not be entitled to challenge the search or seizure unless it were directed at him.

In any event, Xavier Padilla's supervisory role with regard to the transportation was not as intimate as he suggests, for even after Arciniega had been stopped and agreed to cooperate with the police, Xavier Padilla was not aware that the shipment had been intercepted. When Arciniega called Xavier Padilla at the officers' behest, Padilla assumed that the shipment had arrived and sent Maria and Jorge Padilla to pick up the car, apparently without noticing any delay in Arciniega's arrival. See 5/8/90 Tr. 70-73. Xavier Padilla's role as Arciniega's immediate supervisor therefore gave him no special ground for challenging the stop of Arciniega that led to the discovery of the cocaine that Arciniega was carrying.

* * * * *

The court of appeals in this case, as in other similar cases, conducted a detailed inquiry into the various roles played by the respondents in the conspiratorial venture. Those with leadership roles in the venture—the Simpsons and Xavier Padilla—were deemed to have standing because the court considered their roles to give them a sufficient continuing interest in the smuggling operation to be entitled to challenge the stop of Arciniega. Strubbe, who was a lesser figure in the conspiracy, was deemed not to have standing because of his less direct interest in the continuing success of the venture. And with respect to two of the respondents—Maria Padilla and Jorge Padilla—the court remanded for further findings to

determine whether their level of responsibility within the conspiracy was sufficiently great to accord them standing along with the Simpsons and Xavier Padilla.

By focusing on the degree of authority of the respondents within the conspiracy as a measure of their Fourth Amendment standing, the court of appeals has misapplied this Court's precedents. A traffic stop affects the rights of the driver and any passengers he may have. Persons who are not present are not "seized" within the meaning of the Fourth Amendment. Although the stopped vehicle and any personal property contained within it may be "seized" for the brief period of the temporary stop, the seizure of that property, while it is in the possession of a bailee, does not materially interfere with the possessory rights of the owners of either the vehicle or its contents. The principals in a drug smuggling operation therefore do not have standing to object to the stop of one of their couriers, even if they can be said to have control over the courier's movements and a possessory interest in the contraband the courier is carrying.

CONCLUSION

The judgment of the court of appeals should be reversed as to all the respondents except Warren Strubbe. As to Strubbe, the judgment should be affirmed.

Respectfully submitted.

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DECEMBER 1992

☆ U. S. GOVERNMENT PRINTING OFFICE: 1992 342479 60111